

AN EVALUATION OF LEGAL DEVELOPMENT ON A REGIONAL BASIS: THE SEARCH FOR EUROPEAN UNITY

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The general title of the symposium "The Contributions of Law to Contemporary World Order" must be interpreted as an effort to describe the way political ideas and programs have been transformed into legal order. Law itself is only a special technique for realizing a social order and assuring its functioning. One of the most fruitful political ideas that arose after the First World War was that of building a United Europe. But only since the Second World War has it been partially realized. This idea led to the establishment of legal orders. It is better to use the plural, for there is as yet no European legal order, but only, as we shall see, some partial orders.

We may distinguish horizontal and vertical legal orders.¹ In the field of international organization a horizontal order is based on co-operation among the states, whereas a vertical order is based upon integration of the states. Co-operation does not infringe upon the sovereignty of the participant states. Integration creates a Community of states that itself exercises jurisdiction over the states. International organizations based on co-operation do not, as a rule, involve any departure from the framework of general international law. Communities of states based on integration create a Community law that is neither national nor traditional international law but a legal order between the two representing a stage in an evolution from horizontal international law to vertical international law.

Six European states took the first significant step toward integration and thus subjected themselves to a supra-national authority—France, West Germany, Italy, Belgium, the Netherlands and Luxembourg.² They created the so-called European Communities—The European Coal and Steel Community (ECSC), the European Economic Community (EEC), and the European Atomic Energy Community (Euratom). The purpose of this paper is to describe the legal orders of these communities and their basic principles. It is not the intention of this paper to give a complete scientific analysis of all the legal prob-

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¹ Falk, "International Jurisdiction: Horizontal and Vertical Conceptions of Legal Order," 32 Temp. L.Q. 295 (1959), especially 295-98.

² See Efron, Reuben and Nanes, "The Common Market and Euratom Treaties: Supranationality and the Integration of Europe," 6 Int'l and Com. L.Q. 670; Kunz, "Supra-National Organs," 46 Am. J. Int'l. L. 690.

lems raised or to suggest the place of the Community law in a coherent European legal system. To do so would involve both exceeding the limitations of space and anticipating developments still only on the horizon. The law as a technique for establishing order grows with the political society for which the order is established. However, a European political society is only developing, it is not yet a reality. The European society has its common spiritual and cultural values, but is only developing its political values.

Before we deal with the European Communities, it seems necessary to describe first "The Phase of Co-operation"—briefly, the basic difficulties which stand in the way of European unification and the attempts to achieve a measure of unity on the basis of co-operation. In the second part "The Phase of Integration" we shall deal with the goals and tasks of the Communities and their functions.

This paper is concerned with existing legal orders, and it is not its task to draw up a plan *de lege ferenda*. We shall confine ourselves to the description of a way of establishing a vertical order. This may, however, give an indication of the direction a further development of world order must take.

I. THE PHASE OF CO-OPERATION

A. *The Difficulties of Unification*

The necessity for European unification became clear soon after World War II. The reasons for unification were mainly of an economic nature, but the difficulties were very great. Every state wanted to keep its sovereignty. Since the 15th century the states had been conceived to be independent and the highest political orders of mankind. Outside interference in the internal affairs of the state was not tolerable. This is still the basic principle of the U.N. Article two, paragraph seven, forbids intervention by the U.N. in matters "which are essentially within the domestic jurisdiction" of a state. Several European states were unprepared to give up a part of their sovereign power. They were prepared only to participate in an organization on the basis of co-operation. Other difficulties arose out of the differences in the political positions of the European states in the world. Some are neutral, as Switzerland and Austria. Others have responsibilities outside Europe. Thus Great Britain felt that its responsibilities within the Commonwealth made it impossible for it to adhere too closely to the continental plans of unification. The third group of problems is a product of history. The continental European states had fought each other for centuries. Especially the generations-old hostility between France and Germany had to be overcome. After the First World War

an attempt to achieve a closer European unity had failed because of this hostility.

B. *The Attempts at Co-Operation*

For these reasons the construction of a European unity began on the basis of co-operation with OEEC and the Council of Europe. The functioning of these organizations may be described briefly.

1. Structure and Functioning of the OEEC

The Organization of European Economic Co-Operation (OEEC) was founded in 1948. Its members are Great Britain, France, Belgium, Luxembourg, the Netherlands, Denmark, Norway, Sweden, Iceland, Italy, Greece, Turkey, Portugal, Spain, West Germany, Austria, and Switzerland. It will cease to exist at the end of the year and will be replaced by a similar organization, the Organization of Economic Co-operation and Development (OECD), in which the United States and Canada are also full members. The aim of the OEEC is mainly to strengthen by co-operation the European economy. Its organs are a Council of Ministers, an Executive Committee, and a Secretariat.

The Council of Ministers is the decision-making organ. It makes its decisions by unanimous vote.³ However, these decisions have no authoritative character. They have to be ratified in accordance with the constitutional provisions of every state.⁴ The Council may also make recommendations, but these are, as usual in international law, not binding. The OEEC thus follows the general pattern of international law—unanimity and ratification. The OEEC lacks any element of a supranation. It is based only on co-operation. Nevertheless, it was by the OEEC that the European economy and free trade between the European states were re-established.

2. The Structure and Functioning of the Council of Europe

In 1949 on the initiative of Sir Winston Churchill the same European states with the exception of Switzerland, Portugal and Spain founded a European political organization designed to achieve a closer union of the European states for the preservation and promotion of their common inheritance.

The Council has two organs—A Committee of Ministers and a Parliamentary Consultation Assembly. The Committee has no authority to make decisions at all. It may only make recommendations to

³ Arts. 13 and 14.

⁴ Reuter, "Cours d'organisations Européennes," p. 102 (1959-60); *Les Cours de Droit*, 158 Rue Saint-Jacques-Paris Ve (hereinafter Reuter, "Cours").

the states (art. 15). The Assembly may only deliberate and make recommendations to the Committee but not directly to the states.

In spite of the weakness of the Council, it has won important political influence. It has become a place of discussion, of growing understanding, and a sort of engine for the European train toward unification. The most famous result of its work is the European Convention on Human Rights which has been ratified by most of the member states. It is administered by a commission and a court.

The Council has become important in a second respect. For the first time an international organization has a parliamentary assembly. The assemblies of the other international organizations, such as the League of Nations, the United Nations and the specialized agencies, are only assemblies of government representatives. The deputies of the Consultative Assembly of the Council of Europe are chosen by the national parliaments from their members. The Assembly has no powers, but it has been a decisive precedent. All of the organizations constituted later have a parliamentary body. Thus, the European peoples as well as the governments have found representation. For the united Europe idea, it has been psychologically of great importance, even though the power of the Assembly and the whole Council is practically nonexistent.

These two organizations, the economic OEEC and the political Council of Europe, were a good beginning. They encouraged a more intensive European co-operation. However, in the long run, this was insufficient. It was necessary, as it is necessary all over the world, to achieve a closer relationship. The European problems became more and more difficult. Solutions by the way of co-operation alone were impossible. Too often the different interests did not permit a unanimous decision, or the projects adopted were less than satisfactory. It became necessary to create a body that had the authority to make authoritative decisions, binding upon the states and individuals. The step from international co-operation to supra-national integration and direction had to be taken. It was taken in 1950 with the famous declaration of the then French Minister of Foreign Affairs, Robert Schuman, who invited Germany and the other European states to subject their coal and steel industries to a common High Authority. Unfortunately, only six of the eighteen European states of the OEEC followed the appeal of Robert Schuman. However, something entirely new was created—the supranational community.

II. THE PHASE OF INTEGRATION: THE EUROPEAN COMMUNITIES

A. *The Historic Development and the Relations of the Communities with Each Other*

1. The Creation of the Communities

On May 9, 1950 the French Minister of Foreign Affairs, Robert Schuman, proposed to the other European states, principally West Germany, that the resources and the production of coal and steel be put under the control of a European body—the High Authority. This body was to have the authority not only to coordinate, but also to control by directly binding decisions. It was the aim of Mr. Schuman to overcome the hostility between France and Germany and to lay the foundations for a general European federation. The plan itself had a pre-federal character that limited the sovereignty of the participant states.⁵ Six states took part in the subsequent negotiations and became members of the new Community—France, West Germany, Belgium, Italy, the Netherlands and Luxembourg. Great Britain refused to become a member of the new organization because she thought her relations with the Commonwealth precluded consent to this limitation of her sovereignty. The Scandinavian countries likewise found this limitation unacceptable. The new name “Community” for the new organization was adopted to express the new principle that surpassed the old international organizations. The European Coal and Steel Community began its work on July 25, 1952 at Luxembourg. Its organs are a High Authority, a Council of Ministers (both with governing powers and the authority to make directly binding decisions), a Common Assembly, and a Court. The latter two bodies have only controlling authority. The goals of the Community are to establish a common market for coal and steel, to abolish trade restrictions and discriminations based on nationality, and to develop thereby the European economy. The common market was established in 1957. Since that time the market for coal and steel has lost all characteristics of an internal market.

The North-Korean attack on South-Korea and the resulting war led to plans for German rearmament by the United States. The United States and other NATO states feared that something similar would happen in Germany, where East Germany already possessed strong para-military forces. However, France feared an independent German “Wehrmacht.” To provide against the dangers of a German military renaissance the then French Prime Minister, Plevin, proposed the European Defence Community (EDC). This community was based on the same principles as the European Coal and Steel Community. It contemplated integrated armies under a supranational command. The

⁵ See 47 Am. J. Int'l L. 183 (1953); 4 Int. Org. 524 (1950).

limitation of sovereignty was even greater than in the ECSC, and concerned the major powers of a state—its foreign and military affairs. A treaty was negotiated between the six states of the ECSC. Great Britain was to become an associated member. However, Europe was not yet able to accept these far reaching consequences and on August 30, 1954 the French Parliament rejected the treaty.

During the negotiation of the EDC treaty the ECSC began to function. At the request of the ministers of foreign affairs of the "Six" the Assembly prepared a plan for a general European political community, the logical consequence of the EDC. This community would have come very near to the establishment of a federal European state. However this project did not even become the subject of negotiations between the states. After the rejection of the EDC, the European idea was set back for several years. Only in private and semi-official circles was it kept alive. Paul Monnet, the initiator and first president of the ECSC was particularly active.

In 1955 the ministers of foreign affairs of the "Six" met in Messins. The European economic problems called for mutual solutions. The ECSC was only a starting point. Its scope of activity was too small. If a general political community was impossible, it was at least possible to continue in the way opened by the ECSC and to reach a closer association in the economic field. The conference decided to appoint a commission under the presidency of Paul-Henri Spaak, another ardent European statesman, to study the possibilities of a common European market, a European atomic energy organization and a European investment bank. Independently of the governments, this commission worked out plans that were discussed in Venice in June, 1956. The negotiations for treaties concerning the Common Market, to which the investment bank was related politically, and the European Atomic Community continued until March, 1957. Again the "Six" were alone. The treaties for the "European Economic Community" and the "European Atomic Community" were signed at Rome on March 27, 1957, and the two communities started work on January 1, 1958.

The first task of the EEC was to establish the Common Market. This will be completed at the latest in 1972. It will embrace free trade in products, the free exchange of capital and the free circulation of services and labor. The main task of Euratom is to further the development of nuclear energy and to provide on a European scale the energy necessary to enlarge the European economy. Both communities have an institutional pattern similar to the ECSC—two governing organs, a Commission and a Council of Ministers; and two controlling organs, a parliamentary Assembly and a Court.

2. The Relations of the Communities with Each Other

The historic development has not led to a single general political community but rather to three communities in the economic field and thus to three different political orders. Not even in this restricted area did the states succeed in establishing a single community.⁶ This, of course, is an important handicap to the efficiency of the European communities. Another great disadvantage is the limitation to the six continental states. It would have been desirable if at least Great Britain had participated. Now Great Britain and other states have founded a free trade area that stands in many respects in opposition to the EEC. Thus the spiritual and cultural unity of Europe is actually divided into three parts—the Europe of the “Six,” the free trade area, and the OEEC and its successors—with all three united politically at least in the Council of Europe. The task of the future will be to unite these three parts again to form a European continent in the political sense of the term.

To return to the subject of this paper, the three communities are separate organizations, each independent of the others and each having its own scope of authority. Each has its own legal basis in the respective treaties. Each has its own field of action in which the other communities may not interfere. As to the EEC, the general economic community, it is explicitly stated in art. 232 that the treaty does not interfere in any way with the provisions of the other two treaties. Only where the EEC takes the place of the states within the ECSC and Euratom, as to the general commerce policy, will the EEC take the appropriate action rather than the states.⁷ Also, the organs of the three communities are separate and perform different tasks for the different Communities. Each Community has its two governing organs and its two controlling organs. The governing organs are separate, as are the councils of ministers. Unlike the Parliament and the Court they have not been unified by a special provision. Their authority inside the communities is too different to permit unification. There exist three councils in law and fact.⁸ The parliaments and the courts

⁶ Actually several proposals have been made for a fusion of the three Communities, especially by the European Parliament. However, there are significant obstacles. Particularly, the President of France hesitates, because he fears that the new single Community would become too strong.

⁷ Carstens, “Die Errichtung des gemeinsamen Marktes in der Europäischen Wirtschaftsgemeinschaft, Atomgemeinschaft und der Europäischen Gemeinschaft für Kohle und Stahl,” 18 *Zeitschrift für ausländisches öffentliches Recht und Völkerrecht*, 467. If, in 2002, the ECSC treaty ends without renewal the whole field of coal and steel will come under the authority of the EEC (hereinafter: Carstens, “Gemeinsamer Markt”).

⁸ *Contra*, Hahn, “Euratom: The Conception of an International Personality,” 71 *Harv. L. Rev.* 1003 (1958).

have been unified by a special agreement between the six states. However, their function for each community is different and still rests on the provisions of the respective treaties. We shall see below, how far reaching these differences are. While the European Parliament⁹ tries to work out a general pattern for all three communities, the court is strictly bound by the different provisions of the treaties. If we take a look at its rules of procedure we will see that they differ for each of the three communities. Nevertheless, the fact that two organs of great importance are the same for all three communities has a favorable impact upon the European development and provides one point of support for a fusion of the three into one general community.

B. *Goals and Tasks of the Communities*

1. Goals and Tasks of the ECSC

The basic goals and duties of the ECSC are set forth in arts. 2 through 4 of the treaty. All action of the Community must be authorized by these provisions. They contain the "basic philosophy" of the treaty. Art. 2 defines it as follows:

The European Coal and Steel Community is called upon to contribute, in harmony with the general economy of the Member-States and on the basis of a common market as defined by article 4, to the economic expansion, to the development of the employment and to the raising of the standard of life in the Member-States.

The Common Market, the core of the Community, is based upon two principles: no impediment to interstate commerce, be it by state measures, as custom duties, taxes or quotas or other discrimination on the basis of origin, or by private action, as by the division of markets, etc.; and no distortion of the conditions of competition, be it by state subsidies or by private practices of unfair competition, such as concentrations, cartels, etc. In art. 3 the general aims of art. 2 are split off into partial objectives. The organs have a threefold duty: (a) to watch over the regular supply of the common market, the establishment of low prices, and the continuation of the conditions which allow the expansion of productivity, (b) to assure equal access to goods produced in the common market to all consumers, (c) to promote the improvement of the conditions of life and work of the workers, the development of interstate commerce, the expansion and modernization of production and the improvement of quality.

These three articles contain the "quasi-constitutional law" of the Community. They may be changed only by the member-states and

⁹ The original name was "Assembly." The "Assembly" lost this name of its own motion during its first session in February 1958.

not by the Community itself (art. 95, par. 3-4). The Court defined the importance of these provisions in its first decision with these words:

The . . . arts. 2, 3, and 4 of the treaty represent fundamental provisions, that lay down the definition of the common market and the objectives of the Community.¹⁰

In another decision the Court said:

These provisions have . . . coercive character and must be taken together into consideration, so that their appropriate application is assured.¹¹

They are norms which bind the Community directly by the prohibition of certain discriminatory practices.¹²

The quasi-constitutional provisions of arts. 2 through 4 are supplemented in the treaty itself particularly in the "Third Part," "Economic and Social Disposition,"¹³ and especially in arts. 57 through 67 concerning crises, and the areas of prices, discrimination and concentration. The treaty by virtue of these provisions has become a "European economic code."¹⁴ A solid basis has been established upon which the High Authority may take action to fulfill its duties under arts. 2 through 4. But, at the same time, by well-defined and carefully circumscribed competencies, the High Authority has been given a general but limited sphere of action. Thus a system of binding norms has been created that allows the High Authority considerable discretion. It is not merely a technical but a governing organ.¹⁵

¹⁰ The decisions are cited following the German reports: Government of the French Republic v. Hohe Begörde, 21st dec. 1954, gerichtshof der EGKS, Sammlung der Rechtsprechung F, at 23.

¹¹ Groupement des Hauts Fourneaux et Aciéries Belges versus Hohe Behörde, Gerichtshof der EGKS, 4 Sammlung der Rechtsprechung 231 (at 253).

¹² Jaenicke, "Die Europäische Gemeinschaft für Kohle und Stahl (Montan-Union), Struktur und Funktionen der Organe," 14 Zeitschrift für ausländisches öffentliches Recht und Völkerrecht 727 (hereinafter, Jaenicke, "Montan-Union") at 773 and 737; Mosler, "Zur Anwendung der Grundsatzartikel des Vertrages über die Europäische Gemeinschaft für Kohle und Stahl," 17 Zeitschrift für ausländisches öffentliches Recht und Völkerrecht 407 (hereinafter, Mosler, "Grundsatzartikel") at 409; Cf. Reuter "La Communauté Européenne du Charbon et de L'Acier," Paris 1953 (hereinafter: Reuter, "CECA") 45.

¹³ The double character has been made clear by Judge Catalano in "Congress Internationale des Etudes sur la CECA," 2 Actes Officiels Milano 187 (1957)—"Le Traité contient à la fois les normes d'ordre constitutionnel de la Communauté et les dispositions constituant la loi unique et fondamentale du Marché Commun."

¹⁴ Reuter, "Cours" at 222. Others called the treaty "the statute" of the Community, Lagrange, "Le caractère supranational des pouvoirs et leur articulation dans le Cadre de la CECA," 13 (1953); Judge Catalano *supra* note 14.

¹⁵ Reuter, "CECA," at 84,—"Le poids des responsabilités naturelles de la Haute Autorité désigne la Haute Autorité comme un pouvoir gouvernemental."

2. Goals and Tasks of the EEC

The key provision of the treaty is art. 2. It defines the basic objectives of the EEC (in a form similar to that of art. 2 of the ECSC treaty):

The Community has the mission to promote by the establishment of a Common Market and the gradual approach of the economic policies of the Member-States an harmonic development of the economic life within the Community, a steady and weighed economic expansion, a greater stability, an accelerated rising of the standard of life and closer relations between the states, which are united in the Community.

Subsequent provisions contain the procedure to be followed in establishing the Common Market and advancing the economic policies. Art. 3 enumerates the different actions to be taken. There are eleven groups of action, of which the most important are the abolition of custom duties and quotas between the member-states, the introduction of common custom tariffs at the boundaries of the Community, the abolition of impediments for services and capital, and the introduction of common systems of protection against unfair competition. All these actions are to be taken by the states within a 12 year transition period which is subdivided into three parts. The organs of the Community may exercise only limited pressure, provide information, and make proposals. Only if this Common Market is established will the policies in the fields of agriculture, transportation, and commerce become unified within the competence of the Community. The EEC as such does not yet really exist in that its core, the Common Market, has not yet been realized. Only the institutional frame exists. The real Community is still developing. Aside from the provisions concerning the institutional pattern or frame, the treaty contains almost exclusively procedural regulations for the transition period. Most of the provisions will become inoperative in 1970 at the latest. On the other hand, for the subsequent period, nothing is provided. Only for the agricultural sector does the treaty state the general lines that are to be followed.¹⁶

The EEC has no "basic philosophy" as has the ECSC treaty. Its organs are not strictly bound by a tightly woven net of substantive norms. They have to create the norms themselves, especially after the transition period, on the basis of some fundamental principles. The Community itself has to issue the regulations to transform the principles into applicable binding norms. This is the major difference from

¹⁶ Theoretically the Community organs are free to follow either an extreme capitalist or an extreme socialist policy. There is no real basis for a common policy, see Reuter "Cours" at 225.

the ECSC treaty for the Council and commissions of the EEC have a quasi-legislative competence.¹⁷ This is indeed an important step in the direction of a united Europe, however much depends upon the decision maker. The EEC treaty contains only the institutional frame.¹⁸ It has an almost exclusively constitutional character.

3. Goals and Tasks of Euratom

The formulation of the basic objective of Euratom is found in art. 1, par. 2¹⁹ which provides:

The Community has the mission to contribute by the creation of the conditions necessary for the formation and the development of the nuclear industries, to the raising of the standard of living in the Member-States, and to the development of the relations with other states.

This general "mission" or "objective" of Euratom is the same as for the other communities—the raising of the standard of living. However, it is to be reached by other means. The common market is only of minor importance. The nuclear energy must first be developed by research and the construction of power plants. This demands considerable human intelligence and large capital investments. The several European states are not able to undertake these efforts individually. Therefore, the main task of Euratom is to coordinate and combine the potential of the states. Besides, the Community has to assure that security measures are taken and that nuclear materials, especially uranium are available. All these tasks are enumerated in art. 2 of the treaty. The Second Part, "Promotion of the Progress on the Field of Nuclear Energy," regulates the tasks enumerated in art. 2, in more detail.

Thus the Euratom treaty is more similar to that of the ECSC than to the EEC treaty.²⁰ It not only establishes the institutional frame but also creates concrete regulations. In some respect it also contains legislative norms. But on the other hand, it leaves room enough to the organs of the Community for quasi-legislative action.

4. Conclusion

The basic economic principle of all three Communities is a "Common Market." This is a market in which commerce between the

¹⁷ Cf. Reuter, "Cours" at 225; contra Héraud, "Observations sur la Nature Juridique de la Communauté Economique Européenne," 1958 *Revue Générale du Droit International Public* 31.

¹⁸ Reuter, "Cours" at 223 calls it therefore a "traité-cadré"—frame treaty.

¹⁹ See for Euratom the instructive article by Hahn, "Euratom, The Conception of an International Personality," 71 *Harv. L. Rev.* 1001-1056 (1958).

²⁰ Reuter, "Cours" at 223.

member-states is free from restrictions of all kinds and in which uniform rules governing trade with non-member states are established.²¹ For the EEC and Euratom the common market is linked by the treaty with a customs-union. The ECSC treaty does not provide for a customs-union but the practical development has in fact led to it. Whereas in ECSC and EEC the common market is the core of the Community, in Euratom the common market plays only a minor role. On the other hand this Community has a certain monopoly of the supply of basic nuclear material.²²

The main difference between the ECSC and the EEC lies in the fact that the ECSC treaty contains the entire law of the Community whereas the EEC treaty creates only the institutional frame.²³ The legislative competence given the EEC is a forward step which could make possible the integration of the "Six" and perhaps lead to a federal organization. Although this competence is supranational in character, it is of great political importance to see who may exercise this competence, since the decision maker may determine how this competence will be exercised.

C. *The Functioning of the Communities*

1. The Institutional Pattern of the Communities

The institutional pattern is similar for all three communities. They have four organs—two governing organs, an integrated organ and a Council of Ministers; and two controlling organs, a Parliament and a Court.²⁴ The parliaments and the courts are unified into a single Parliament and a single Court by a special agreement. The governing organs, including the councils, are separate for each community.²⁵

The members of the integrated organs, the High Authority for the ECSC, and the Commissions for the EEC and Euratom, are nominated by the government for their "general competence," and, in the case of the High Authority, additional members are chosen by cooptation. The High Authority and the Commission of the EEC have nine

²¹ Carstens, "Gemeinsamer Markt" at 460; also, Robertson, "European Institutions: Co-operation, Integration, Unification," London, 1959. This treatise may be recommended as the most instructive study of the European organizations in the English language.

²² Reuter, "Cours" at 263-64.

²³ See in general, Reuter, "Cours" at 222 and the very instructive analysis by the former Belgian Deputy of the Common Assembly of the ECSC, Pierre de Wigny, later the Belgian Minister of Foreign Affairs, "The Parliamentary Assembly in the Europe of the Six," Doc. Nr 14 of the Common Assembly of the ECSC, 1957-58. It exists in all four official languages of the ECSC and, presumably, also in English.

²⁴ Art. 7, ECSC treaty, art. 4, EEC treaty, art. 3, Euratom treaty.

²⁵ *Supra* note 8.

members. The Commission of Euratom has five members.²⁶ After their nomination they may not accept any instructions or orders from their governments. They make their decisions absolutely independent of state influence by simple majority vote.²⁷ The integrated organs are supranational European bodies.²⁸

The Councils of Ministers are not supra-national but international organs. They represent the states within the Communities. Their members are state delegated and bound by the instructions of their governments. However, the Councils are organs of the Communities and not a sort of permanent state conference. They make their decisions in the name of the Communities and the decisions constitute Community and not state, law. The decisions are made in different ways—by unanimous vote, by qualified vote and by simple majority vote.²⁹ This depends upon the importance of the decision. The greatest impediment to the development of integration is the unanimous vote. It is used very often in the EEC, where the Council has the main decision-making power. However, in most cases it will be replaced by a qualified vote during the transition period.³⁰

The European Parliament³¹ consists of 142 deputies—36 from France, Germany and Italy, 14 from the Netherlands and Belgium, and 6 from Luxembourg.³² They are elected by the national parliaments from among their members. However, plans exist for direct election by the people of the states. But even now the deputies are independent because they are not representatives of the governments but of the people of the Communities. The Parliament is a supra-national organ. It has no decision-making power. It only deliberates, it does not legislate.³³ The Parliament, nevertheless, has become one of the most active parts of the Communities. It has sought to enlarge its competence as far as possible.

²⁶ Art. 10, ECSC treaty; art. 158, EEC treaty; art. 127, Euratom treaty.

²⁷ Art. 9, par. 5, ECSC treaty; art. 157, par. 2, EEC treaty; art. 126, par. 2, Euratom treaty.

²⁸ It is in this connection that this expression appears in the ECSC treaty. In the other treaties it has been omitted for political reasons. However, it is the same for the commissions of the EEC and Euratom.

²⁹ Art. 28, ECSC treaty; art. 148, EEC treaty; art. 118, Euratom treaty. What majority is actually required is regulated by the respective provisions that give the competence of decision.

³⁰ See *e.g.*, arts. 28, 43, 75 and 87, EEC treaty.

³¹ In the treaties it is called "Assembly." The Assembly, however, took this name during its first session.

³² Art. 21, ECSC treaty; art. 138, EEC treaty; art. 108, Euratom treaty.

³³ Art. 20, ECSC treaty; art. 137, EEC treaty; art. 107, Euratom treaty. The deputies are not grouped according to their nationality but according to their party affiliations—Christian-Democrats, Socialists, liberals.

The judicial control is exercised by the Court of the European Communities. It consists of seven judges. They are nominated by the governments for six years.³⁴ The judges exercise their function with complete independence. They are bound only by the law. Thus, the Court is also a true supra-national organ. Its decisions appear as decisions of the whole Court, even if they have been taken by majority vote. The Court, following the continental tradition, does not use dissenting opinions. It is assisted by two attorney-generals.³⁵

Every community has one or more consultative bodies consisting of representatives of the industrialists, trade unions, consumers, scientists and other interested groups of the communities.³⁶ The treaties themselves prescribe the cases in which they are to be heard. However, they may be consulted as often as the governing organs wish to do so. These bodies have no decision-making power.

2. The Competences of the Governing Organs in General

It is the governing organs that bear the responsibility for the fulfillment of the objectives and tasks of the Communities. They are the active part and are leading toward and developing European integration. They regulate economic problems. They are, in a figurative sense, the economic government of the Europe of the Six. To fulfill their tasks the governing organs were endowed with special competences to regulate and to intervene both indirectly and directly. They exercise these competences with respect to the states and with respect to individuals. This is the core of the supra-nationality of the Communities.³⁷ The Communities have no general competence as states; they are not sovereign. Their authority is functional. It is limited on the one hand by their functions and on the other by special provisions that establish each particular competence.³⁸ However, every treaty provides for

³⁴ Art. 32, ECSC treaty; art. 167, EEC treaty; art. 139, Euratom treaty.

³⁵ Arts. 11-13 of the Statute of the Court, appendix of the ECSC treaty; art. 166, EEC treaty; art. 138, Euratom treaty.

³⁶ ECSC, Consultative Committee, art. 18, ECSC treaty; EEC and Euratom, Economic and Social Committee, art. 193, EEC treaty, art. 165, Euratom treaty; EEC Monetary Committee, art. 105 EEC treaty, Transport-Committee, art. 83, EEC treaty; Euratom, Committee of Science and Technology, art. 134 Euratom treaty.

³⁷ Carstens, "Gemeinsamer Markt" at 459. It could be doubted whether the particulars are also within the competence of the EEC organs, because there is nothing in the treaty itself. However, this is due only to the general character of the treaty as described above. The legislative acts, which will be issued by the EEC, will create rights and duties also and mainly for the particulars. Reuter, "Aspects de la CEE," 1 *Revue du Marché Commun* 6-14, 160-168, 310-316 (hereinafter Reuter, "Aspects") at 167.

³⁸ For the ECSC, but the same is valid for the EEC and Euratom: Visscher, "Congrès International des Etudes sur la CECA," 2 *Actes Officiels* 7-85, Milano 1957 at 28; Constantinesco, same volume at 217.

extraordinary "implied powers,"³⁹ e.g., the power "without which the provisions of the treaty are meaningless and not practicable, reasonable and appropriate."⁴⁰ However, these provisions must be interpreted restrictively.

We may distinguish indirect measures and direct intervention. Indirect measures are, following the definition of the court, those measures that "create by influencing the fundamental factors of the economy, conditions that offer a stimulus to the enterprises to behave on their own initiative as the High Authority wishes, having in mind the realization of the tasks that the treaty has transferred to it." Direct interventions, on the other hand, "compel the enterprises directly to act as the High Authority deems necessary with regard to the situation that it has to control according to the treaty."⁴¹ These definitions are valid also for the two other communities. Whether indirect measures or direct interventions are in order depends upon the situation that must be remedied.⁴² The range of indirect measures is very great. It encompasses all manner of influence, even the establishment of maximum and minimum prices. All three Communities make extensive use of them.⁴³

Direct intervention takes different forms. The ECSC treaty distinguishes decisions and recommendations. The decisions may be general or specific and are directly binding upon the addressees in all respects. The recommendations are binding only with respect to the objective, which the addressee may achieve as he deems best. The EEC and Euratom treaties distinguish ordinances, decisions, and instructions. The ordinances, which replace largely the "general decisions" of the ECSC, have general validity. They are directly binding in all respects in all member-states. The instructions have the same legal effect as the recommendations of the ECSC. The decisions also are directly binding upon the addressees in all respects. It has been debated whether the two Communities can also issue general decisions

³⁹ Art. 95, par. 1-2, ECSC treaty; art. 235, EEC treaty; art. 203, Euratom treaty.

⁴⁰ The Court in *Fédération Charbonnière de Belgique v. Hohe Behörde*, Gerichtshof EGKS, July 16th 1956, 2 Sammlung der Rechtsprechung 199 at 312.

⁴¹ *Groupement des Hauts Fourneaux et Aciéries Belges v. Hohe Behörde*, Gerichts of der EGKS, 4 Sammlung der Rechtsprechung 231 at 260 (translation by the writer).

⁴² Only the ECSC treaty prescribes in what field of production indirect measures have priority over direct interventions (art. 57). However, with this exception there is no general rule that indirect measures have priority.

⁴³ See, for an intensive study, Reuter, report on the "Congrès International des Etudes sur la CECA," 5 Actes Officiels, Milano 1957, at 56.; Schüle, "Marktinterventionen der Hoben Behörde und finanzielle Einrichtung," 19 Zeitschrift für ausländisches öffentliches Recht und Völkerrecht 464 and the decision of the Court *supra* note 43. These texts concern only the ECSC, but in general the arguments are valid also for the two other Communities, which may both employ many forms of indirect measures.

other than ordinances. The treaties themselves provide for decisions affecting only some (but not named) individuals, and there are, between ordinances that affect the whole community and decisions that concern only one or a group of named addressees, general decisions affecting only some of the states or individuals.⁴⁴

The distinctions between ordinances, general decisions, individual decisions and instructions or recommendations are ones of legal form. Another distinction may be made in terms of the function of the law creating process. This process consists of four steps—creation of constitutional regulations, legislative regulations, executive regulations and individual legal acts. All four of these categories may also be found in the formation of community law by the governing organs. The constitutional regulations are contained in the treaties and they may be created by amendment to their provisions. The legislative regulations are the ordinances and general decisions⁴⁵ that create a system of general compulsory provisions in realization of the general tasks of the communities. The executive regulations are those ordinances and general decisions that carry out, in a general form, already binding norms of the treaties or legislative regulations with regard to a special situation. It must be noted that the distinctions between these two kinds of regulations are very difficult to discern, much more so than in state law.⁴⁶ Because of the differences in form, we call these categories “quasi-constitutional” and “quasi-legislative” regulations. However, the distinction must be made because different rules apply. The individual decisions may be orders, prohibitions, grants of privileges or statements of fact.⁴⁷ While this function is executive in character, it may be combined with the authority to issue executive regulations. Thus, there may be distinguished three categories of functions—a quasi-constitutional function, a quasi-legislative function and an executive function. In the following paragraph we shall try to briefly demonstrate how these functions are exercised.

3. The Competences of the Governing Organs in Detail

The three defined categories of functions are, in general, state functions. However, the states gave up their competences in certain

⁴⁴ See Daig, “Die Gerichtsbarkeit in der Europäischen Wirtschaftsgemeinschaft und der Europäischen Atomgemeinschaft,” 83 *Archiv des öffentlichen Rechts* (hereinafter, Daig, “Gerichtsbarkeit”) at 166 and 30. A classification of the different acts is given also by Reuter, “Cours” at 109-16.

⁴⁵ The normative character of the general decisions has been recognized in different judgments of the Court. *E.g.*, *Fa. I. Nold KG v. Hohe Behörde, Gerichtshof der Europäischen Gemeinschaften*, 5 *Sammlung der Rechtsprechung* at 112.

⁴⁶ Cf. Pescatore, “Les Aspects Juridiques du Marché Commun, Liège” at 66 (1958).

⁴⁷ *Fa. I. Nold KG v. Hohe Behörde*, *supra* note 47.

fields and left these fields to the powers of the Communities as laid down and circumscribed in the treaties. The Communities now exercise in these fields original functions based on their own will. The states have subjected themselves, as well as their inhabitants, to these powers.

The treaties have a double character. They are international treaties and constitutional instruments of the communities established by them. The states as parties to the treaties retained for themselves the general power to change the treaties following the common procedure of international law. But, nevertheless, the Communities were given the authority to carry out some autonomous changes, which do not need ratification by the states and are directly binding on them. Thus, art. 95, par. 3-4 ECSC treaty gives authority to the Community to change under certain circumstances those provisions of the treaty that concern the competence of the High Authority. The proposals are worked out by the High Authority and the Council, presented to the Court for examination, and then accepted by the Parliament. The Parliament may not amend the proposal made by the governing organs.⁴⁸

The other two treaties do not have such a general quasi-constitutional authority except in special cases. In the EEC they are of minor importance. Nevertheless, it is important in principle that these changes can be made only by the governing organs. The Council decides finally and the Parliament must be heard only in some cases.⁴⁹ In Euratom the power to amend concerns the major chapters regulating the supply of material for the production of nuclear energy, art. 76; security in the production plants, art. 85; and title to the basic material, art. 90. These three chapters together with the chapters concerning research, the protection of health, and the common market, are the core of the treaty. Actually, there are no limits to the kind of changes which may be made. For both communities the amending procedure has become easier. The councils decide on proposals by the commissions. The Parliament has only an advisory position. The Court does not participate. However, while the final decision rests with the Councils, the interests of the states may not be by-passed.

The quasi-constitutional power of the three communities is a forward step with regard to international organizations. However, it is still too limited and too dependent upon the states. Only if the power

⁴⁸ This procedure has been used once (change of art. 56). The first proposition was refused by the Court. Eighth General Report of the Activity of the High Authority 1959-60, German version 282-86, and the advice of the Court 5 Sammlung der Rechtsprechung 553.

⁴⁹ See e.g., art. 126, EEC treaty regarding the social fund and art. 200, EEC treaty regarding financial contributions.

to amend is concentrated in the Parliament elected in direct elections, can the communities become really independent.

The quasi-legislative competence is practically nonexistent in the ECSC because the treaty is itself the fundamental law of the Community and leaves no room for legislation by the Community.⁵⁰ But it is quite different for the EEC. Although the treaty is largely confined to the establishment of an institutional frame for the Community it contemplates considerable quasi-legislative activity. If the Community becomes fully functional after the transition period, the community organs will have broad powers in the highly important fields of agriculture, trade, commerce, and transportation.⁵¹ The formation of a common policy is up to the states during the transition period, but once this period is over it is the Community that will be responsible. The provisions of the treaty concerning these fields contain only more or less precise general principles; not specific, directly applicable norms. This demands an intensive quasi-legislative activity by the Community.⁵² In addition to this general quasi-legislative authority after the transition period, the Community has some quasi-legislative powers during this period concerning both these four fields and some other special areas. Thus, the treaty forbids discrimination, but leaves it to the Council to regulate it in detail. The same procedure is followed with respect to the freedom to work where one wishes (arts. 49 and 51). In all cases the Council decides on the basis of proposals by the Commission. In some cases the Parliament must be heard. The Council makes its decisions by unanimous vote (arts. 51 and 103) or by a qualified majority (arts. 7, 79 and 113). In some cases the mode of voting changes from a unanimous vote to a qualified majority (art. 75).

The quasi-legislative competence of Euratom is further developed than in the ECSC but not so far as in the EEC. The most important cases concern security matters (art. 24) and the protection of health (art. 31). It is again the Council that decides on proposals of the Commission.

The executive power is much more comprehensive than that of the legislature. It is the basis of the daily work of the Communities. It is not a general power for any of the three Communities. The communities even here only have the power specifically laid down in the treaties.⁵³

⁵⁰ Cf. Reuter, CECA at 47 and 99, Judge Catalano, *supra* note 14 at 187.

⁵¹ Arts. 38-47, arts. 74-84, art. 103, arts. 110-116.

⁵² Reuter "Aspects" at 162. Even if general economic policy remains within the competence of the states, they may be obliged to coordinate their policies because the main parts of the economic questions are under the authority of the Community.

⁵³ Lagrange, *supra* note 14 at 11; "Institut des Relations Internationales: Etudes

In the ECSC the executive regulations are of greatest importance, since the treaty itself is the law that must be executed. The competence of the ECSC to issue executive regulations is manifold. Thus, in the case of a crisis, be it through overproduction or shortages, quotas and priorities must be established (arts. 58 and 59). With regard to prices, the High Authority may define forbidden practices, prescribe the forms of publication, establish certain price areas, and fix minimum and maximum prices (arts. 60 and 61). In the field of trade restraints, the High Authority regulates by ordinances, several questions left open by the treaty (art. 66).

Because the EEC treaty is only an institutional treaty the main regulations are of a quasi-legislative character. However, in some cases the treaty establishes binding regulations but leaves it to the governing organs to fill in the details. Thus, for instance, arts. 85, 86, 92, and 93 forbid private restrictions on competition and state distortion through subsidies. These prohibitions are directly binding. However, the Council must regulate the details by ordinances on proposal of the Commission (arts. 87 and 94).

The Commission has minor executive powers, the most important of which concern the licensing of protective measures by the states during the transition period, *e.g.*, art. 37, par. 3; art. 46, art. 73 and in general art. 226. These licenses are general because they themselves contain the conditions and details of the protective measures. Of special importance are the provisions of art. 121 and art. 155 par. 2, no. 4. The Council may, under these provisions, transfer to the Commission the authority to issue all regulations that are necessary to administer the quasi-legislative acts of the Council.⁵⁴

For Euratom the situation is similar to that of the EEC; however, the authority is much more limited. The Council does not issue executive regulations. The Commission has competence only in a few cases. The most important concern the mode of exchange of research findings in the member-states (art. 15, a-d) and accounting for nuclear material by the enterprises (art. 79). As in the EEC treaty, art. 124, par. 2, no. 4 of the Euratom treaty provides for the transfer of executive power to the Commission by the Council.

By their authority to issue executive regulations, the Communi-

sur la CECA," Bruxelles at 33 (1953); Visscher, *supra* note 40 at 52; *contra*, Reuter, "CECA" at 49, the Commission of Euratom 1958 Journal Officiel 417; *contra* Kraushaar, "Zur Kompetenz der Kommissionen der Europäischen Gemeinschaften zum Erlass von Verordnungen," 1959 Die öffentliche Verwaltung 726.

⁵⁴ See *e.g.*, art. 26 of Ordonnance No. 11 of the Council of Ministers of the EEC concerning the tariff rates according to art. 79, par. 3, EEC treaty, German version 1960 Amtsblatt 1121.

ties may create a coherent body of Community law.⁵⁵ These rules concern mainly the enterprises and individuals and obligate them directly. In the ECSC and Euratom it is almost exclusively the integrated organs that issue the executive regulations. In the EEC the Council is still more important than the Commission in this field, but even there the authority of the Commission is more extensive with respect to executive regulations than in the field of quasi-legislative competence.

By their individual decisions, the governing bodies may, like a state agency, obligate the inhabitants of the state to take special action and even to enforce the decisions by fines. In the ECSC the High Authority may direct individual decisions against the states as well as against private enterprises. The latter are more important. The major competence again concerns prices, unfair competition and combinations. The High Authority may suspend certain price privileges of the treaty for a particular business (art. 60, par. 2). It may licence cartels only under certain conditions, or it may revoke a former licence (art. 65). It may force forbidden cartels or combinations to dissolve or even utilize a compulsory sale for this purpose (art. 66, par. 5). The High Authority has the added power to enforce by fines (arts. 64, 65 and 66).

The EEC treaty provides for only a few individual decisions.⁵⁶ This is again due to the special construction of the treaty. Individual decisions presuppose general norms. They must be created by the Council. The Council, then, transfers the necessary authority under art. 155 to the Commission.⁵⁷ However, in some cases the Council or the Commission may, even during the transition period, issue individual decisions, especially concerning private restrictive practices (arts. 25, 33). Coercive measures are not provided for by the treaty, but may be created by the Council.⁵⁸

The Commission of Euratom has the power to make individual decisions mainly in the fields concerning security and safety matters. In the latter it may employ coercive measures, as sequestration (art. 83). Here again, the competence may be enlarged by the Council following art. 124, to assure the realization of the quasi-legislative acts of the Council.

The power to make individual decisions is already far reaching in the ECSC and may be enlarged in the two other Communities. It is

⁵⁵ Maurice Lagrange, *supra* note 15, at 11; Institut des Relations Internationales, *Etudes sur la CECA*, Bruxelles 1953, at 33; Visscher, *supra* note 40, at 52.

⁵⁶ See for instance art. 26 of the Ordonnance No. 11 of the Council of Ministers of the EEC concerning the tariff-rates according to art. 79 par. 3 EEC-treaty, German version: 1960 *Amtsblatt* 1121.

⁵⁷ *Ibid.*

⁵⁸ Art. 17, 18 of the ordonnance, *supra* note 56.

of special importance that the Communities have the means to force the addressees to obey their orders, or may acquire these means. All three treaties provide that the decisions that impose the obligation of a payment must be executed by the states following their execution procedures. Only the authenticity of the decision may be verified, not the legality.⁵⁹

D. *The Control*

The governing bodies of the communities are subjected to a double control: The political control of the Parliament and the judicial control of the Court.

1. Political Control

The Parliament has the authority to control the governing organs and to deliberate.⁶⁰ Both of course are closely related. Thus, the Parliament has gained the competence to deliberate on ECSC matters in spite of the fact that art. 20 of the ECSC treaty provides only for control. The Parliament exercises its control by its deliberations on and discussions of the General Reports that the integrated organs have to submit every year, and of the special actions taken by the governing organs. The Parliament may overthrow the integrated organs by a vote of "no confidence."⁶¹ But it has no influence in the reconstituting of the integrated organs. The Parliament also has no influence upon the Councils. It tries to exercise some influence by special meetings, but the great disadvantage remains. It is especially great in the case of the EEC, where the Council makes the main decisions. In spite of the fact that the Parliament was very active from the beginning, it could not overcome its structural weakness. This could only be done by changing the treaties. Nevertheless, the Parliament has become the main center of European integration.

2. Judicial Control

The judicial control is more effective than the political control and covers all acts of the governing organs. Although the court is the same for all three communities, the control is regulated differently for the ECSC than for the two other Communities. We shall describe them separately.

The basis of the judicial control of the actions of the High Authority is art. 33. The court may annul every decision, whether general or individual, and any recommendation of the High Authority that has

⁵⁹ Art. 92 ECSC-treaty; art. 192 EEC-treaty.

⁶⁰ Art. 20 ECSC-treaty; art. 137 EEC-treaty; art. 107 Euratom-treaty.

⁶¹ Art. 24 ECSC-treaty; art. 144 EEC-treaty; art. 114 Euratom-treaty.

been attacked by the Council or the states on the following grounds: Incompetence, violation of a formal or substantive norm of the treaty or a regulation, and abuse of power. Private enterprises may attack individual decisions on the same grounds. They may sue the High Authority for a general decision only on the ground of alleged abuse of power affecting them. This provision means, following the interpretation by the court, that the enterprise must be "the object or at least the victim of the asserted abuse of power."⁶²

Of great importance is art. 36, par. 3. It provides that an enterprise that has been fined for violation of a general decision may attack the fine on the ground that the general decision is invalid. The court has found in art. 36, par. 3, the general principle "that illegal general decisions may not be applied to the enterprises and that no legal duties of the enterprises may be deduced from those decisions. The provisions of art. 36 do not constitute, in the opinion of the court, a special regulation for the cases of financial sanctions; rather it expresses a general principle."⁶³ By this decision the court has established the power of the judicial review of the general decisions of the High Authority. The importance of this will not be underestimated by an American reader who knows the importance of *Marbury v. Madison*. In the lesser field of the ECSC the result is the same.

The judicial control of the EEC and the Euratom is based on art. 173 of the EEC treaty and art. 146 of the Euratom treaty respectively. The two provisions have exactly the same wording. Thus, the exercise of judicial control of the two Communities is the same. There have been no cases yet decided. This is due to the fact that there have been no individual decisions. Both Communities are still in a transition period, the EEC in law and Euratom in fact.

The grounds on which the court may annul the actions of the governing organs of the two Communities are the same as for the ECSC. These are incompetence, violation of essential formal provisions, violation of substantive provision and abuse of power. All actions of the Commissions and the Councils may be attacked by the Councils and the Commissions respectively as well as by the states. An individual person may bring an action against the governing organs for individual decisions on the same grounds and for ordinances as concern them "directly and individually." This reflects an effort to resolve by this formulation the difficulties that arose under the ECSC treaty. It was

⁶² *Fédération Charbonnière de Belgique v. Hohe Behörde*, Gerichtshof der EGKS, July 16th 1956, 2 Sammlung der Rechtsprechung 199.

⁶³ *Meroni Co. Industrie Metallurgiche, SPA v. Hohe Behörde*, Gerichtshof der Europäischen Gemeinschaften, 4 Sammlung der Rechtsprechung 9 (translation by the writer).

successful only in part. It has yet to define "directly and individually."

Art. 184 treaty and art. 156 Euratom treaty establish the power of judicial review of all ordinances and thus recognize the development of the law by the court.⁶⁴

The system of judicial control conforms to the general standard applied in western states. But the court not only assumes legal protection, but develops the law and is, therefore, highly important in the movement toward integration. Only the court settles disputes concerning the treaties, so it alone decides questions of community law which arise in cases before a national court.⁶⁵ Thus, the uniform development of the law is assured.

The jurisprudence of the court, which up to now consists only of judgments concerning the ECSC treaty, seeks to decide cases without binding the future by general definitions and thus to keep the law flexible enough to meet the necessities of as many situations as possible. The Communities themselves are not as yet as well established as the states. They have to find their way through difficult, unexplored jungles. The law of the Communities must be solid in its principles, but flexible in special situations. The law would lose its efficiency as a means of integration if it were committed to certain constructions in the early stages.

CONCLUSION

The European Communities are only the first step in the direction of a complete political European unity. What are the results of the new approach by integration?

First, the states gave up some of their competence in certain fields and left them to the original power of the communities. They subjected themselves to the power of independent superimposed authorities, thus establishing a vertical legal order.

Second, the inhabitants became direct subjects of the same authorities. The states gave up their exclusive right to bind their inhabitants. They accepted the authority of the supra-national organs "to intervene in matters which are essentially within the domestic jurisdiction."⁶⁶ This authority is quasi-constitutional, quasi-legislative and executive.

However, the communities have not become federal states, their authority over the states and over individuals is not all embracing. It is limited to certain fields of action by well defined functions in the economic sector; the communities are functional international organizations. Their competence is confined to the fulfillment of these func-

⁶⁴ *Infra*.

⁶⁵ Art. 41 ECSC-treaty; art 177 EEC-treaty; art. 150 Euratom-treaty.

⁶⁶ UN-Charter, Art. 7 par. 2.

tions. But even inside the field of their functions their competence is not general. They are confined to certain kinds of actions under determined conditions. They may not exercise any power that has not been given to them by a special provision. The vertical legal order of an integrated community is not a state legal order, but a pre-state, pre-federal legal order.

The efficacy of the legal provisions depends largely upon the independence of the communities from the states. We have alluded to the importance of the question of the identity of the decision-makers—of the power-centers inside the communities for integration. It is impossible to treat this question in detail.⁶⁷ However, we shall try to indicate the general lines.

In the ECSC the decision making power is concentrated by the treaty in the High Authority (art. 14). The Council has only the right to be heard and in some cases it must give its consent. The High Authority is an integrated organ. It is absolutely independent of the governments. However, it would be wrong to conclude from this that the ECSC is really fully independent. Actually, the states retain considerable power. We may even say the decisive power is in their hands. The developments of recent years have led to a certain predominance of the Council, which represents the states and which retains the real power. The High Authority does not have enough power to force the states to follow its direction, but often enough the High Authority is forced by the states to adopt their proposals. The most instructive example was the coal crisis of 1959. The High Authority was not able to push through its plans against the resistance of the states. Nevertheless, the High Authority in its daily work develops an independent activity and works for integration.

In the EEC and in Euratom the decision-making power is in the hands of the Councils (art. 145 EEC treaty and art. 115 Euratom treaty). The Councils, it may be recalled, are international organs and their members are bound by the instructions of their governments. The states in these Communities are predominant. Nevertheless, a certain independence is guaranteed. The Councils may take action only upon proposals by the commissions. They may amend these proposals only by unanimous vote. Thus, the commissions have the initiative and a certain power of direction. The system inside these two Communities is a system of checks and balances, mainly because the Commissions have important executive powers that may be enlarged by the Councils. The Councils are predominant but not omnipotent.

⁶⁷ For an instructive analysis see Bebr, *The Balance of Power in the European Communities*, 5 *Annuaire Européen—European Yearbook* 53-79.

We may conclude this analysis with the following theses:

- (1) The European communities are the first step toward a political unification of Europe.
- (2) The European communities use for the first time the means of integration to reach this unification.
- (3) The European communities constitute a vertical legal order and thus are above the states.
- (4) The European communities exercise their supra-national functions in the economic field by specially defined authority that has been transferred to them by the states. The states have thus limited their own authority.
- (5) The European communities are legally independent of the states, but their decision making process is a mixed process of community and state power.
- (6) The further development of the European communities depends on the enlargement of the powers of the Parliament, a closer relation between the Parliament and the integrated organs and an enlargement of the powers of the integrated organs.